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September 5, 2017

VIA ECF

Hon. Steven M. Gold
U.S. Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Plaintiff's *ex parte* request for permission to subpoena non-party Beth Rhoads for information concerning service of process on Defendant Kerry Lutz.
***Bueno v. Lutz*, Case No: 1:17-cv-04427-FB-SMG**

Dear Judge Gold:

The undersigned represents Plaintiff Agustina Bueno in this diversity suit for violations of New York General Business Law § 349. Plaintiff requests leave to subpoena deposition testimony by written questions from non-party Beth Rhoads for the purpose of serving the summons and complaint on Defendant Kerry Lutz.

Plaintiff commenced this action by filing her Original Complaint on July 26, 2017. A summons for Defendant Kerry Lutz was issued later that day. DE 4. On July 28, 2017, Plaintiff sent the complaint and summons to JMT Management—Legal Support Services (“JMT”) for service on Mr. Lutz at 5500 Military Trail, Suite 22242, Jupiter, FL 33458. This address is listed as Mr. Lutz’s personal and mailing address for his business Rushmore Holdings, LLC on the Florida Secretary of State’s website. *See* Exhibit A.¹

On August 1, 2017, JMT informed Plaintiff that the Military Trail address is merely a box at a UPS store. JMT further stated that the store employees refused to confirm whether Mr. Lutz has an active box at that location. The undersigned therefore directed JMT to perform a skip trace on Mr. Lutz in order to determine his business or home address. The skip trace was unsuccessful, and Plaintiff remains unable to locate Mr. Lutz for service.

Florida law provides:

“If the only address for a person to be served which is discoverable through public records is a private mailbox, a virtual office, or an executive office or mini suite,

¹ The Military Trail address is also listed as Mr. Lutz’ address on the Florida Secretary of State’s webpage for 901 Trading, LLC. *See* Exhibit B.

substitute service may be made by leaving a copy of the process with the person in charge of the private mailbox, virtual office, or executive office or mini suite, but only if the process server determines that the person to be served maintains a mailbox, a virtual office, or an executive office or mini suite at that location.”

Fla. Stat. Ann. § 48.031(6)(a) (West)

Thus, Plaintiff can serve Mr. Lutz at his 5500 Military Trail mailbox if Plaintiff can confirm that the mailbox is in fact active. Plaintiff wishes to send a deposition on written questions to non-party Beth Rhoads, an employee at the UPS store where the mailbox is located, to confirm that the mailbox is active and belongs to Mr. Lutz. Ms. Rhoads has refused to answer that question when posed by the process server of the undersigned.

Accordingly, Plaintiff requests permission to serve a deposition on Ms. Rhoads for the limited purpose of determining whether Mr. Lutz can be served at the Military Trail through the Military Trail mailbox.

Respectfully submitted,

/s/

Ahmad Keshavarz

cc: Opposing counsel via ECF